IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) AFL-CIO, *Petitioner,*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY MEMORANDUM FOR PETITIONER

Respondent in its Opposition continues to insist, in the face of this Court's rulings and the limits of Article III of the Constitution, that this suit for vacation pay due under a collective bargaining agreement is a state cause of action grounded in state law. Thus Respondent merely underlines the utter fallacy of the "state rights" premise on which the court below applied the Indiana limitation to this Section 301 suit:

1. For the proposition that this is a state action Respondent cites the lower court's statement that the Complaint in the District Court "seeks not only wages due for vacation

pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action." But the lower court's observation that Petitioner recognized the case as a state action because it pleaded certain state statutes in the Complaint, is without foundation. The Complaint (R. 3a) avers that it is "brought by the plaintiff under the provisions of Section 301 of the Labor Management Relations Act," and that "Jurisdiction of this cause is vested in this Court by virtue of said Act..." The concluding recitation in the Complaint (R. 5a) of Indiana statutes providing for double unpaid wages, merely safeguards the benefit of any additional state remedy, this Court not yet having clarified the extent to which state remedies survive in Section 301 actions. In any event, a 301 suit could not become a state cause of action by virtue of a plaintiff's erroneous belief in that regard. This Court having ruled that Section 301 invokes a "body of federal substantive law" (*Smith* v. *Evening News Assn.*, 371 U.S. 195, 200), a plaintiff's contrary characterization of his federal action would have no operative effect.

2. Respondent disputes the existence of conflict with this Court's rulings calling for uniformity of Section 301 law and declining in analagous contexts to make diverse state limitations periods controlling upon suits under federal statutes. But Respondent's distinctions of this Court's authorities are distinctions without a difference. Thus, only a few months ago this Court in *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, declined to subject FELA actions to the diversity of state savings statutes; even more destructive of uniformity—under a statute whose uniformity purpose this court has repeatedly emphasized—is the ruling herein that Section 301 suits are subject to the differing limitations periods of 50 state jurisdictions.

3. Most noteworthy is the failure of the Opposition to de-

tract from the importance of the federal question presented. On this score the Opposition "denies" (p. 16) that "the claim for wages [in this case] was created by Section 301 as a new substantive right . . ." But this is merely a reiteration of the lower court's erroneous holding that "the question of whether vacation pay is due the workmen here involved is a question of state law." Repetition of that erroneous predicate of the ruling on the merits of the issue at hand cannot detract from the importance of the question presented. Accordingly we submit that this case clearly presents a fundamental federal statutory question which this Court should review to preserve the national uniformity objective of Section 301 of the Labor-Management Relations Act.

Respectfully submitted,

JOSEPH L. RAUH, JR.,
JOHN SILARD,
STEPHEN I. SCHLOSSBERG,
1625 K Street, N.W.,
Washington 6, D.C.,
Attorneys for Petitioner.

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